102. I analyzed information about the size of the customers that self-provisioning CLECs are serving in Verizon NJ's proposed non-impairment market. Attachment SMB-19 includes those CLECs that Verizon NJ identifies in Attachment 2 to its direct testimony, and for each CLEC, where the CLEC reported the data, the attachment shows the numbers of lines associated with locations of varying sizes. **<<<BEGIN PROPRIETARY**

END PROPRIETARY>>>

The Commission should examine the degree to which CLECs serve the entire mass market.

103. I also analyzed whether the CLECs that Verizon NJ identifies in its direct and supplemental testimony serve the *entire* mass market. Attachment SMB-20 includes those CLECs that serve the entire mass market. **<<<BEGIN PROPRIETARY**

END PROPRIETARY>>> Attachment SMB-20 demonstrates that the self-provisioning trigger is not met, regardless of the geographic boundaries selected.

104. As I discuss in Section III, the Commission, in fine-tuning its network unbundling rules, should clarify that the self-provisioning trigger is not met unless at least three CLECs self-provision switches and serve *both* residential and small business markets. Alternatively the Commission should clarify its rules to clarify that if the residential market is not served by at least three self-provisioning CLECs, then impairment exists in the residential market. Similarly, if the small business market is not served by at least three self-provisioning CLECs, impairment exists in the small business market. The goal of the 1996 Act is to encourage local competition for all consumers, not simply a subset of consumers.

105. The FCC-established self-provisioning trigger is not met in Verizon NJ's proposed geographic markets or in the wire center-based markets that I recommend. Attachments SMB-21 and SMB-22, which are based on Attachment 1 to Verizon NJ's supplemental testimony submitted in New Jersey BPU Docket No. TO03090705, demonstrate that the self-provisioning trigger is not met. Attachment 1 to Verizon NJ's supplemental testimony provides UNE loop information at a wire center level.

107. Attachment SMB-21 simply annotates Verizon NJ's Attachment 1 by adding a column that assesses whether the self-provisioning trigger is met in a particular wire center. If I recommend that the Commission exclude a particular CLEC from consideration in a particular wire center, I then specify the reason for such exclusion. The reasons for exclusion include the following:

- The CLECs' presence is negligible and therefore should be discounted. I use the conservatively low threshold of 20 lines to measure the CLEC's presence in a wire center.
- The CLEC's presence is a consequence of a regulatory obligation rather than a

business-motivated reason. **<<<BEGIN PROPRIETARY** .

END PROPRIETARY>>>

- The CLEC does not report the quantity of lines it serves.

108. Attachment SMB-22 includes the following information: CLLI code, location name, and the CLEC that serves some portion of the mass market. **<<<BEGIN PROPRIETARY**

END PROPRIETARY >>> do not provide information about the size of the customers that they serve, rendering it impossible for the Commission to assess whether and where they serve small business customers. In general terms, Attachment SMB-22 includes those wire centers within Verizon NJ's proposed non-impairment market with three or more self-provisioning CLECs that serve some customers, but, in most instances, do not serve *both* residential *and* business customers, and that, therefore, do not qualify for the trigger analysis.

109. In **<<<BEGIN PROPRIETARY** **END PROPRIETARY>>>** of the 96 wire centers encompassed by Verizon NJ's proposal, three or more CLECs serve a portion of but by no means all customer classes in the mass market in these wire centers. Because these CLECs do not serve all mass market customers, the FCC-established self-provisioning trigger is not met in any of these wire centers. Attachments SMB-21 and SMB-22 provide information about the geographic scope of CLECs' entry. These two attachments clearly demonstrate that CLECs compete on a wire

center basis. None of the wire centers included in Attachment SMB-22 (i.e., the wire centers where CLECs are serving a submarket within the mass market) are contiguous.

110. Based on my analysis of the evidence submitted in New Jersey BPU Docket No. TO03090705, I conclude that Verizon NJ has not demonstrated that the self-provisioning trigger necessary to make a finding of non-impairment has been met. Although, as I demonstrate in Section III, geographic markets that correspond with wire centers are more appropriate than the ones that Verizon NJ proposes, *regardless* of whether the Commission adopts Verizon NJ's proposed market definitions or mine, Verizon NJ has failed to demonstrate that the self-provisioning trigger is met.

111. Furthermore, it is important to keep in mind the ultimate goal of this proceeding, that is, to ensure that customers have meaningful competitive options both now (before any finding of non-impairment is made) and after any such finding. If the Commission reaches a finding of non-impairment and then customers do *not* have substitutes for Verizon NJ's service (because the Commission drew the market boundary too broadly or placed undue weight on CLECs' precarious presence), this will have grave consequences for consumers. By contrast, if the Commission reaches a finding of impairment, thus enabling nascent competition to take hold, and then at a later date reaches a finding of non-impairment, then the harm in the interim to the industry is non-existent or negligible.

112. Verizon NJ refers repeatedly to the "objective" aspect of the analytic exercise this proceeding requires.[134] Although Verizon NJ apparently would have regulators believe that this process simply represents a "mechanical" counting exercise, the successful resolution of this proceeding depends on the careful, judicious reasoning by the Commission. Certainly the use of "[o]bjective criteria can avoid the delays caused by protracted proceedings and can minimize administrative burdens," and the FCC-specified thresholds are intended to provide "bright-line rules to guide the state commission,"[135] but the complexity of granular, unique markets within state boundaries ultimately requires a more in-depth and comprehensive assessment of local market structures than Verizon NJ implies exists. Verizon NJ fails to show that its proposed MSA-based market is appropriate.

Intermodal competition is irrelevant to a "track one" evaluation of non-impairment.

113. Verizon NJ asserted that "the FCC expressly includes 'intermodal providers of service comparable in quality to that of the incumbent LEC' for the purposes of the switching triggers."[136] The portion of the FCC's rules that Verizon NJ cites states, in pertinent part:

> To satisfy this trigger [the local switching self-provisioning trigger], a state commission must find that three or more competing providers not affiliated with each other or the incumbent LEC, *including intermodal providers of service comparable in quality to that of the incumbent*

[134]West/Peduto Direct (Verizon NJ), see, e.g., at 9, 15, 16, 26, 32.

[135]*TRO*, ¶ 498.

[136]West/Peduto Direct (Verizon NJ), at 22, citing 47 C.F.R. § 51.319(d)(2)(iii)(A)(1)-(2).

> *LEC*, each are serving mass market customers in the particular market with the use of their own local circuit switches.[137]

The FCC also states that as "we evaluate evidence of intermodal deployment, we will consider to what extent services provided over these intermodal alternatives are comparable in cost, quality, and maturity to incumbent LEC services."[138] The FCC explains its terminology as follows: "In this context, we refer to 'intramodal competition' as the competing provision of services over platforms using the same or similar technology. In addition, we refer to 'intermodal competition' as the competing provision of services over alternative technological platforms." [139]

114. Verizon NJ has failed to provide evidence of intermodal providers offering service to the mass market that is of *comparable quality* to its voice grade POTS. Cable telephony is not a comparable product and cannot be considered a substitute for voice grade local service, because, among other things, customers cannot purchase voice grade service apart from a cable package, and, therefore, the consumer's cost of obtaining local service from a telephony provider exceeds the consumer's cost of obtaining POTS. Similarly, wireless service is irrelevant to the application of the self-provisioning trigger because it does not offer a comparable quality to Verizon NJ's POTS. Moreover, despite Verizon NJ's assertion as to the relevance of intermodal providers, its specific filing does not appear to rely on their presence.

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[137]47 C.F.R. § 51.319(d)(2)(iii)(A)(1) (emphasis added). (Part (A)(2) applies to the application of the wholesale facilities trigger.

[138]*TRO*, ¶ 97, footnote omitted.

[139]*Triennial Review NPRM*, footnote 73.

115. Verizon NJ also refers to Vonage and other carriers that use Voice Over the Internet Protocol ("VoIP"), and contends that the Board "should count Vonage among the carriers providing widespread mass market switched service in New Jersey."[140] However, VoIP-based services are even less of a substitute for voice grade service than is cable telephony-based service. Significant regulatory challenges cast significant ambiguity over the development and use of VoIP,[141] and, therefore, I do not believe that the Commission should rely in any way upon its existence in assessing the level of impairment in New Jersey. Although VoIP represents a significant industry development, clearly numerous regulatory and technical issues mean that it cannot be considered a substitute in the voice circuit switching market.

[140]West/Peduto Direct (Verizon NJ), at 28.

[141]See, *e.g.*, *In the Matter of IP-Enabled Services*, FCC WC Docket No. 04-36, Notice of Proposed Rulemaking, Rel. March 10, 2004; *In the Matter of Petition for Declaratory Ruling that AT&T's Phone-to-Phone IP Telephony Services are Exempt from Access Charges*, FCC WC Docket No. 02-361, Order, Rel. April 21, 2004; "Easing of Internet Regulations Challenges Surveillance Efforts," *New York Times*, January 22, 2004, at 1, which discusses, among other things, discussions and disagreements about VoIP among the Justice Department, the Federal Bureau of Investigation, the Drug Enforcement Administration, and the Federal Communications Commission.

V. TRANSITION MECHANISMS

Background

116. In its *Order and Notice of Proposed Rulemaking*, the FCC established a two-phase plan to occur over a twelve-month period, which commenced with the publication of its rules in the *Federal Register* on September 13, 2004. In the interest of having "an orderly transition mechanism," the FCC required continued availability over a six-month period of those elements that were provided under interconnection agreements as of June 15, 2004, and, during the subsequent six-month period, established a plan that is intended to mitigate disruption should the FCC reach a finding of non-impairment for any elements.[142] The FCC seeks comment on whether there are circumstances "in which particular final rules would necessitate additional transition mechanisms apart from or beyond this second six-month phase."[143]

117. During the "interim" period, *i.e.*, the first six months after the mid-September publication of the *NPRM* in the *Federal Register*, ILECs must provide unbundled access to switching, enterprise market loops, and dedicated transport according to the rates, terms and conditions that applied under interconnection agreements as of June 15, 2004. The FCC permits changes in these rates, terms and conditions if they are or have been superseded by voluntarily negotiated agreements, an intervening

[142] *NPRM*, ¶ 10.

[143] *Id.*, ¶ 10.

Commission order affecting specific UNE obligations, or a state public utility commission ("PUC") order "raising the rates for network elements."[144]

118. Because state PUCs have authority to set rates for UNEs, which the *NPRM* would seem to undermine, the FCC should clarify and/or correct its language to refer to PUC orders that *change* the rates for network elements, rather than identifying only those state PUC orders *raising* rates.[145]

119. The FCC also defines a "transition" period, which is the six-month period beginning the earlier of either mid-March 2005 (six months after the publication of the *NPRM* in the *Federal Register)* or the effective date of the FCC's final unbundling rules. During this transition period, the FCC stated that in any areas of non-impairment for mass market switching, ILECs may charge a UNE-P rate equal to the *higher* of (1) the rate which the CLEC paid on June 15, 2004 *plus* one dollar or (2) the rate that a state PUC establishes between June 16, 2004 and mid-March 2005 *plus* one dollar. For areas of non-impairment for enterprise market loops and/or dedicated transport, ILECs may choose the *higher* of (1) *115 percent* of the rate which the CLEC paid on June 15, 2004 or (2) *115 percent* of the rate that a state PUC establishes between June 16, 2004 and mid-March 2005.

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[144] *Id.*, ¶ 29.

[145] CLECs have petitioned the FCC to clarify that rate *decreases* are permitted. *In the Matter of Unbundled Access to Network Elements, Review of the Section 251 Unbundling Obligations of the Incumbent Local Exchange Carriers*, CC Docket Nos. 04-313, 01-338, *Petition for Emergency Clarification and/or Errata,* submitted by the Association for Local Telecommunications Services, et al, August 27, 2004.

These transitional rates would apply only to the embedded customer base and not to CLECs' new customers. Also, carriers are "free to negotiate alternative arrangements."[146]

120. The FCC stated that "[s]ubject to the comments requested in response to the above *NPRM*, we intend to incorporate the second phase of the plan into our final rules." The FCC should eliminate this second phase from its final rules. The FCC's transitional rate rules contradict and undermine states' UNE ratemaking authority. Furthermore, it is hard to imagine ILECs willingly negotiating "alternative arrangements" with rates *less* than those that regulators permit. As a practical matter, because impairment exists for unbundled mass market switching throughout New Jersey, not only because of costly and excessively manual hot cut processes, but because, as I demonstrate in Section IV, the triggers are not met, the FCC's "transitional" rate increases would not apply to UNE-P in New Jersey. Nonetheless, the FCC-specified transitional rate increases represent poor public policy. Furthermore, if, contrary to my granular analysis and my recommendation, the FCC identifies particular markets in New Jersey where mass market switching impairment does not exist, then the transitional rate increases would harm consumers.

The FCC should re-affirm the transition plans that it set forth in the *TRO* and in the *TRO* rules.

121. The FCC should analyze the "transition" more broadly than simply determining the manner in which the rates, terms, and conditions will apply to UNEs during the next twelve months. As the FCC recognized in the *TRO,* the quality and cost of hot cut processes affect the likelihood of

[146] *NPRM*, ¶ 29.

disruption for consumers and the industry.[147] Until ILECs offer seamless hot cuts at cost-based rates, CLECs are impaired because they cannot transition from UNE-P to UNE-L without jeopardizing consumers' service quality and without confronting an insurmountable economic barrier.

122. *USTA II* does not diminish the significance of hot cuts to UNE-P. According to *USTA II*, hot cut costs contribute to but do not prove non-impairment. The Court stated:

> Though certain sections of the Order suggest that impairment due to hot cut costs might be sufficiently widespread to support a general national impairment finding even in the absence of more "nuanced" determinations to be made by the state commissions, Order ¶ ¶ 459, 470, 473, the Commission at other points concludes that a national finding, without the possibility of market-specific exceptions authorized by state commissions, would be inconsistent with *USTA I*. See Order ¶ ¶ 186–88, 196, 425, 485, 493. At the very least, these latter passages demonstrate that the Commission's own conclusions do not clearly support a non-provisional national impairment finding for mass market switches, and thus require us to vacate and remand.[148]

The Court also stated that:

> the Commission implicitly conceded that hot cut difficulties could not support an undifferentiated nationwide impairment finding. Order ¶ ¶ 425, 485, 493. Moreover, we made clear in *USTA I* that the Commission cannot proceed by very broad national categories where there is evidence that markets vary decisively (by reference to its impairment criteria), at least not without exploring the possibility of more nuanced alternatives and reasonably rejecting them. 290 F.3d at 425–26.

123. As I understand the Court's reasoning, it faults the FCC in relying on hot cut costs and "difficulties" in its determination of impairment on a *national* level, but does not dispute the relevance of hot cut costs and processes to the determination of impairment, provided the analysis is

[147] *TRO*, ¶¶ 470, 472.

[148] *USTA II*, at 21.

conducted in a sufficiently "nuanced" manner. Accordingly, it is not only valid under the *USTA II* ruling, but also imperative from a public policy and economic perspective, for the FCC to consider the status of hot cut processes and rates in its assessment of whether impairment exists in particular markets. For this reason, in this section of my Affidavit, I not only address the FCC's general questions regarding its proposed twelve-month transition, but also address the specific status of hot cut processes and rates in New Jersey in order to enable the FCC to reach an informed decision about unbundled mass market switching in relevant New Jersey markets. Finally, I address the hot cut rules included in Sections 51.319(d)(ii)("Batch cut process") and 51.319(d)(iv) ("DS0 capacity end-user transition") set forth in the *TRO.*

The major purposes of establishing rules for the transition are to encourage consumer and investor confidence in CLEC and ILEC operations, and to minimize consumer disruption when consumers migrate from one supplier to another supplier.

124. A smooth transition from UNE-P to UNE-L is essential in order to encourage consumer and investor confidence in CLEC and ILEC operations. Seamless hot cut processes are also critically important to prevent consumer disruption. Consumers must maintain access to service and "eliminating unbundled access to incumbent LEC switching on a flash cut basis could substantially disrupt the business plans of some competitors."[149] A transition plan is required to allow sufficient time for competitors to change business and operational plans in light of changes to the regulatory regime and the need to change interconnection agreements. CLECs will have to develop new UNE-L provisioning systems, which may include the need to hire new employees, undergo training, revise

[149] *TRO*, ¶ 529.

billing systems, etc. CLECs must also have time between any regulatory decision and the time it is able to serve customers using alternative facilities. Otherwise CLECs would need to halt advertising and customer acquisition, thus harming consumers.

125. The FCC, in its unbundling rules, adopted a transition period for mass market loops and mass market switching. Specifically, the FCC adopted a three-year transition period for new line sharing arrangements[150] and an implementation plan for moving the embedded base of DS1 enterprise customers and mass market customers to competitive LECs' switches.[151] The *TRO* requires that carriers adopt an implementation plan with the ILEC within two months of a state finding of non-impairment and carriers may not request access to unbundled local circuit switching five months after such a finding. Migration orders are to be submitted according to the following schedule (1) thirteen months after a non-impairment finding: CLEC must submit orders to migrate one-third of their customers; (2) twenty months after a non-impairment finding: CLEC must submit orders to migrate half of its remaining unbundled local circuit switching end users; and (3) twenty-seven months after a non-impairment finding: all remaining orders must be submitted to the ILEC.[152]

126. *These provisions are critical and should be retained in the final rules in order to prevent consumer disruption.* In response to *USTA II*'s directive that the FCC, not state commissions, must

[150] *Id.*, ¶ 265.

[151] *Id.*, ¶ 532.

[152] *Id.*, ¶ 532, § 51.319(d)(iv)(A).

determine whether impairment exists, the FCC need only make minor wording changes to the section of its rules governing "DS0 capacity end-user transition." For example, in Section 51.319(d)(iv), the FCC can simply change the current language, "[i]f a state commission finds that no impairment exists in a market..." to "[i]f the FCC finds that no impairment exists..."[153]

127. My analysis of granular data, whether assessed within the markets that I recommend, or even within the ill-supported markets that Verizon NJ recommends, demonstrates that Verizon NJ has failed to demonstrate non-impairment. If and when CLECs' competitive presence and use of their own switches to serve mass market customers justify a finding of non-impairment in any particular market, then the FCC should not release Verizon NJ prematurely from its unbundling requirements for mass market switching. The irrevocable harm of prematurely discontinuing UNE-P, which is a critical stepping stone in the evolution of local competition, outweighs the purported harm of continuing Verizon NJ's obligation to lease mass market switching to its competitors.

128. If the FCC at some future time, determines that one of the FCC-established triggers is met for a relevant market *and* that there is an acceptable batch hot cut process, then several transitional steps must precede the elimination of CLECs' access to unbundled voice grade circuit switching. In its *Triennial Review Order*, the FCC directs states to establish a transition plan to migrate the embedded customer base. The FCC specifically determined that the "most critical aspect of any industry-wide transition plan is to avoid significant disruption to the existing customer base served via unbundled

[153]Similar wording changes apply in the referenced section of the FCC's rules (i.e., § 51.319(d)(iv).

loop circuit switching so that consumers will continue to have access to their telecommunications service."[154] The FCC's findings in the *TRO* regarding the need for a smooth transition, are entirely consistent with *USTA II* and are essential to protect consumers. As the FCC determined, "state commissions are well suited to monitoring the operational aspects of this migration . . . State commissions have strong incentives both to encourage competition (as a means of providing citizens of their states with a choice of service providers) as well as to foster new investment (as a means of promoting economic growth in their states)."[155]

129. If the FCC should contemplate a finding of non-impairment, which I do not recommend for New Jersey, then it should open an investigation into the industry's transition plan so that the FCC can ensure that states are managing "the transition in a way that promotes investment as well as continued choice for consumers."[156] A smooth migration is essential to ensure that consumers have uninterrupted access to basic telecommunications service, and to the public switched telephone network.

High hot cut costs and excessively manual hot cut processes cause impairment in New Jersey.

Procedural History of the Board's investigation of Verizon NJ's hot cut processes and costs.

[154] *TRO*, ¶ 529.

[155] *Id.*, ¶ 531.

[156] *Id.*, ¶ 531.

130. The impetus for the ongoing New Jersey Board investigation into Verizon NJ's hot cut processes and costs arises out of the Board's recognition of the role that hot cuts play in transitioning customers to CLEC facilities. In its February, 2004 *Interim Order* the Board stated:

> In its Order on Reconsideration [in UNE Docket No. TO00060356], the Board of Public Utilities ("Board") recognized the role that hot cuts play in transitioning customers to Competitive Local Exchange Carrier ("CLEC") facilities when it approved Verizon New Jersey, Inc.'s ("VNJ") promotional $35.00 hot cut rate and advised VNJ that it would revisit the hot cut issue six months prior to the expiration of the promotional hot cut rate, and investigate whether automation of the hot cut process is possible.[157]

At that time, the Board approved a Verizon NJ "promotional" rate for hot cuts through March 2004, and ordered that the issue would be examined again six months prior to the expiration of the hot cut rate. The Board opted to keep the hot cut matter distinct from the *TRO* proceeding. The Board, however, found that enough common issues of fact among the "single" hot cut and batch hot cut proceedings supported consolidation of the two, and commenced a separate proceeding in a collaborative technical workshop to investigate both matters together. Verizon NJ filed updated rate and cost information, upon which discovery and responsive testimony by parties were filed. Due to various delays, the promotional hot cut rate was extended until conclusion of the instant phase of this proceeding. Evidentiary hearings in this matter were held at the Board on May 24 and 25, 2004. Briefs and reply briefs were filed July 2 and July 16, 2004, respectively.

[157] *In the Matter of the Implementation of the Federal Communications Commission's Triennial Review Order*, BPU Docket No. TO03090705, *Interim Order*, February 19, 2004.

131. A well-functioning hot cut process is essential to ensure that consumers can migrate among suppliers without service disruption. Mass market customers have an expectation that when they switch to a new service provider, the installation will be timely and transparent. As the FCC opined in its *Triennial Review Order*, "competition is meant to benefit consumers, and not create obstacles for them."[158] Furthermore, if hot cut rates are set too high, then competitors will find it prohibitively expensive to migrate customers from Verizon NJ's switches to their own switches, thereby leaving New Jersey consumers with fewer options.

132. An inefficient and inadequate hot cut process, with prices based on inflated costs, represents a significant barrier to local telecommunications competition in the mass market. Residential and small business customers, who lack the telecommunications redundancies that large businesses typically possess, have little patience or understanding for service delays and interruptions. Furthermore, the mass market offers minimal profit margins, which means that over-priced hot cuts will prevent local competition from evolving. The likelihood of the mass market benefitting from the service quality and service choices that local competition can bring depends critically on the establishment of a trouble-free, reasonably priced system that enables consumers to migrate easily among carriers, and one that does not require a household or small business to *disconnect* its Internet access.

133. Verizon NJ, however, lacks an economic incentive to foster the development of such a process because the consequences of the *status quo* favor Verizon NJ: high hot cut prices discourage

[158] *TRO*, ¶ 467.

Verizon NJ's competitors from serving the market, and disgruntled mass market customers who experience service delays and disruptions will likely stay with or return to the incumbent carrier. The lack of an economic incentive on the part of Verizon NJ combined with CLECs' lack of negotiating strength mean that regulatory intervention is essential to ensure that the market place functions efficiently. Continuing regulatory involvement by the New Jersey Board and by the FCC is essential to ensure that Verizon NJ's hot cut processes work properly, efficiently, and sufficiently, and that Verizon NJ offers hot cuts to its competitors at a fair price.

134. As my attachments to this Affidavit demonstrate, CLECs' reliance on UNE-P varies significantly among Verizon NJ's central offices, which suggests that Verizon NJ must be well-prepared to handle wide variations in demand for hot cuts. Furthermore, mass market customers rely disproportionately on UNE-P in order to obtain competitive choice, as Attachments SMB-12 through SMB-20 and SMB-22 demonstrate. Therefore, Verizon NJ's ability to handle hot cut orders and the prices CLECs must pay for hot cuts affect directly the prospects (if any) for mass market competition.

Verizon NJ's proposed batch hot cut process is cumbersome and unduly constrains CLECs' control over their customers' telecommunications choices.

135. Hot cuts involve coordination (communication between Verizon NJ and CLECs) and provisioning (the disconnection of the UNE-L from Verizon NJ's switch and the reconnection to a CLEC's switch). All three hot cut processes that Verizon NJ proposed in New Jersey's hot cut proceeding are excessively manual, are not seamless, do not accommodate all types of loops (*i.e.*,

loops served by IDLC, CLEC-to-CLEC migrations, EELs, and lines with DSL), are not scalable, and are not timely.[159] Verizon NJ failed to address or to suggest a remedy for the inherent weakness in the status of carrier-to-carrier interactions, namely that Verizon NJ lacks any economic incentive to improve its hot cut process. Verizon NJ did not demonstrate that it is seeking to identify ways to improve its process.[160]

136. Verizon NJ's lengthy time frame for completing batch hot cuts would jeopardize CLECs' relationship with their mass market customers. In today's environment, Verizon NJ completes a typical hot cut in five days.[161] Verizon NJ proposes to complete batch-processed migration in an interval lasting between six and twenty-six *business* days, depending on the amount of migration activity in a given central office, and, therefore, the shortest calendar period would be eight days and the longest could be as long as 38 days (an interval of 26 business days entails six weekends).[162] Verizon NJ will not provide assurances to CLECs that, even if they have large batch hot cut orders, the interval will be seven rather than, say, seventeen days.[163]

[159]Ex. MCI-9, at 7.

[160]Ex. MCI-9, at 22.

[161]T. 101:22-101:23, May 25, 2004 (Thomas Maguire).

[162]T:43, May 25, 2004 (Thomas Maguire).

[163] T. 79:2-81:3, May 25, 2004 (Thomas Maguire); Ex. Cavalier-1, at 11.

Verizon NJ has not demonstrated that its proposed hot cut process is sufficiently scalable to accommodate high volumes of hot cut orders.

137. The evidence in the New Jersey Board's proceeding raises concerns about Verizon NJ's ability to handle high volumes of hot cut orders in a trouble-free manner.[164] Furthermore, Verizon NJ glosses over the challenges of increasing and training its work force to handle unprecedented volumes of hot cuts. Verizon NJ would need to recruit, hire, and train many more management and technical employees, and as one CLEC witness stated, "simply 'throwing bodies' at a problem is seldom a viable solution."[165] Furthermore, Verizon NJ would need to increase its staff significantly.[166] Although in New York, Verizon persuaded the state PUC that "it is possible for Verizon to hire and train additional workers to perform a significantly expanded volume of hot cuts that will necessarily be required if the availability of the Unbundled Network Elements Platform (UNE-P) is phased out in the future,"[167] in New Jersey, Verizon NJ did not provide persuasive evidence of its ability to substantially increase its volume of hot cuts *without* jeopardizing service quality. At risk is the viability of CLECs' operations and mass market customers' service quality,

[164]Ex. Bridgecom/TruCom-1-P, at 5-6; Ex. ATT-HCUT-2-P; Ex. MCI-8.

[165]Ex. Bridgecom/TruCom-1, at 7-8.

[166]Ex. MCI-8, at 59-60, footnote omitted.

[167]*Proceeding on Motion of the Commission to Examine the Process and Related Costs of Performing Loop Migrations on a More Streamlined (e.g., Bulk) Basis,* New York Public Service Commission Case No. 02-C-1425, *Order Setting Permanent Hot Cut Rates*, Issued and Effective August 25, 2004 ("New York Hot Cut Order"), at 1.

with negligible, if any, risk to Verizon NJ. The FCC should heed the concern expressed by one CLEC that "here, where it is only the competitive LECs that will be hurt by Verizon NJ's failures, the leap of faith that Verizon NJ seeks is a leap too far. Verizon NJ needs to definitively establish, not simply declare that it can handle hot cut volumes far in excess of anything it has previously faced."[168] Customers will blame the CLEC, not Verizon NJ, for service quality failures and CLECs' inability to modify customers' orders during the potentially multi-week "holding pattern." This consequence, of course, harms CLECs and customers, without any apparent consequence to Verizon NJ.

Verizon NJ's batch hot cut process has not been adequately tested, nor is it sufficiently automated.

138. CLECs have raised serious concerns about Verizon NJ's hot cut process, chief among them that Verizon NJ relies excessively on manual intervention. CLECs identified and described in detail automated alternatives to Verizon NJ's extremely manual processes.[169] Verizon NJ's hot cut process lacks automated processes and includes redundant and/or unnecessary steps and excess hand-offs among internal organizations.[170] The evidence in New Jersey's proceeding demonstrates that Verizon NJ's hot cut processes are cumbersome, inadequate, and fail to incorporate forward-looking

[168]Ex. Bridgecom/TruCom-1, at 12.

[169]*See, e.g.,* Ex. Bridgecom/TruCom-1, at 18. Ex. BridgecomTruCom-1, at 19-36; Ex. ATT-HCUT-1, at 22-28; 46-61; Ex. MCI-9, at 3-4; 7-56.

[170]Ex. ATT-HCUT-1, at 22-23, 30-31, 47.

ordering and provisioning practices. Furthermore, Verizon NJ's reliance on "negotiated" intervals and its vague speculations about when it might perform batch hot cut orders are anti-competitive. Verizon NJ has failed to demonstrate that it can scale its operations to handle large volumes of conversions from UNE-P to UNE-L, and, therefore, absent corrective action, Verizon NJ's inadequate process will jeopardize CLECs' relationships with their consumers and residential and small business consumers' trouble-free migration among carriers.

Consumers' demand for digital subscriber line service underscores the importance of establishing a hot cut process that enables customers to retain their DSL service while migrating to a different carrier for voice service.

139. Verizon NJ's hot cut process presently does not accommodate customers with combined voice and data needs, *i.e.*, a customer with digital subscriber line ("DSL") service and voice service being provided over the same line.[171] Until it resolves this issue, however, Verizon NJ essentially proposes a "cold cut" for these customers. Verizon NJ lacks a compelling economic incentive to resolve the operational problems associated with enabling hot cuts for voice without jeopardizing customers' data services. Industry discussions do not address sufficiently the fundamental and inherent advantage that Verizon NJ possesses in attracting and retaining customers that seek high speed access.

[171]Ex. Bridgecom/TruCom-1, at 18. Ex. BridgecomTruCom-1, at 19-36; Ex. ATT-HCUT-1, at 22-28; 46-61; Ex. MCI-9, at 3-4; 7-56.

140. In order to handle a DSL customer in a hot cut process, the customer must *disconnect* the line. Verizon NJ's witness testified that "at this point in time we would require the customer to disconnect their DSL . . . so they could be included in a batch."[172] Requiring customers to *cancel* their DSL in order to be included in a batch hot cut represents a significant operational and economic barrier to CLECs' ability to migrate customers. Common sense dictates that those customers that seek high speed access are more likely to be a part of the potential *demand* for CLECs' voice services, *i.e.*, be willing to migrate to CLECs for voice service and to experiment with other telecommunications services. On the *supply* side, common sense dictates that CLECs are more likely to market to customers with sophisticated and broad telecommunications needs.

Verizon NJ's Proposed Hot Cut Cost Study is Fundamentally Flawed.

141. As the evidence in the New Jersey proceeding demonstrates, not only are Verizon NJ's proposed rates too high, but the existing, interim $35.00 hot cut rate is also excessive. I do not advocate setting rates for the explicit goal of facilitating CLECs' entry and success in the local market. However, Verizon NJ has failed to justify its proposed hot cut cost. Verizon NJ proposes a service order charge of $23.87, an installation charge of $66.55 and an IDLC surcharge of $119.27.[173] The inflated costs result from numerous ill-supported factors, among which are

[172]T.83:8-83:14, May 25, 2004 (Thomas Maguire).

[173]Ex. Cavalier-3 (Verizon NJ response to Cavalier-39).

assumptions of excess manual intervention, high fall out, and mis-classification of recurring costs as non-recurring costs. Verizon NJ failed to demonstrate that its estimates and adjustment factors are valid for among others, the following reasons:

- The task times corresponding with today's environment are based on a statistically flawed survey.
- The typical occurrence factors are inadequately documented and supported.
- The forward-looking adjustment factors are entirely undocumented and insufficient, and fail to transform Verizon NJ's embedded cost study into a forward-looking study that conforms with total element long run incremental cost ("TELRIC") principles.
- Verizon NJ's labor rates are excessive.
- Verizon NJ's gross revenue loading factor is inflated and ill-supported.

143. Under Verizon NJ's proposal, the rate for a basic hot cut for a single residential customer for one line would be $90, approximately 30 percent higher than the cost if the same order were handled through a batch hot cut at the proposed rate of $69.59.[174] In contrast with batch orders, which Verizon NJ proposes to complete within a six to 26 day interval, Verizon NJ completes a basic order within a five-day interval, and, furthermore the CLEC can specify the hour and date.[175] As the

[174]T. 47:20-47:23, May 25, 2004 (Bruce Meacham).

[175]T. 48:2-48:19, May 25, 2004 (Bruce Meacham).